

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA 204/2026 in
WP(C) No. 2009/2026
CM No. 5838/2026
Caveat No. 2103/2026

Mumtaz Mehraj & Anr. ...Petitioner(s)

Through: Mr. Shuja Ul Haq, Advocate

Vs.

UT OF J&K And ORS. ...Respondent(s)

Through: Mr. Jehangir Iqbal Ganai, Sr. Advocate with
Mr. Mushtaq Ahmad Dar, Advocate
Mr. Vakis Malik, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

ORDER
02.09.2026

01. This intra court appeal arises from an order and judgment dated 21.08.2026, passed by learned Single Judge of this Court [“the Writ Court”] in WP(C) No. 2009/2026 titled as Sakeena & Anr. Vs. UT of J&K & ORS., whereby the writ court has while allowing the writ petition of the respondent Nos. 6 & 7 declared the entire proceedings initiated by Execute Magistrate 1st Class, Harwan at the instance of SHO P/ S Harwan, as illegal and has accordingly set aside the orders dated 10.01.2026 and 10.08.2026.

02. The Writ Court has directed the 3rd Additional District Judge, Srinagar [“the Civil Court”] to bring the suit property under immediate attachment of Nazir of the Court of Principal District Judge, Srinagar, so as to distance both the parties from the suit property, till the final adjudication/disposal of the temporary injunction application.

03. Briefly stated the facts leading to the filing of this appeal are that, the respondent Nos. 6 & 7 herein filed a civil suit for possession and injunction against the appellants and the official respondents before the Civil Court, in which the Civil Court vide its order dated 29.10.2025, directed the appellant No. 1 to maintain status quo, *qua* the suit property including the land underneath measuring 18 marlas (including the shamilat deh and proprietary land) falling under Khasra No. 126, Harwan Srinagar [“the suit property”].

04. Complaining that the respondent No. 7 therein had violated the interim order dated 29.10.2025 passed by the Civil Court, the appellants filed an application under Order 39 Rule 2(A) CPC for initiating appropriate proceedings for willful and deliberate breach of the Court order.

05. It was alleged that on the intervening night of 7th & 8th January 2026, the respondent Nos. 6 & 7 (the plaintiffs in the suit) had with the help of their henchmen and with the use

of illegal force, entered in the suit property to take over the possession forcibly from the appellant No. 1 (defendant No.4). It was also pleaded that with regard to the occurrence, FIR No. 4/2026 under Sections 331(4), 305, 324(4) BNS was registered in the Police Station Harwan against the respondent Nos. 6 & 7 herein.

06. It seems that due to the alleged occurrence on 7th & 8th January 2026, and registration of FIR before the Police Station, the SHO P/S Harwan took over the possession of the suit property and kept it under his lock and key and accordingly requested the Executive Magistrate 1st Class, Harwan Srinagar, to initiate proceedings under Section 164 of BNSS 2023.

07. The Executive Magistrate 1st Class, Harwan vide order dated 10.01.2026, ordered the temporary attachment and sealing of the suit property. The proceedings culminated into an order dated 10.08.2026 passed by Executive Magistrate 1st Class, Harwan directing restoration of possession of the suit property in favour of the appellant No. 1.

08. The order was passed by the Executive Magistrate 1st Class, Harwan after returning a finding, on the basis of evidence collected during inquiry, that the appellant No.1 herein had

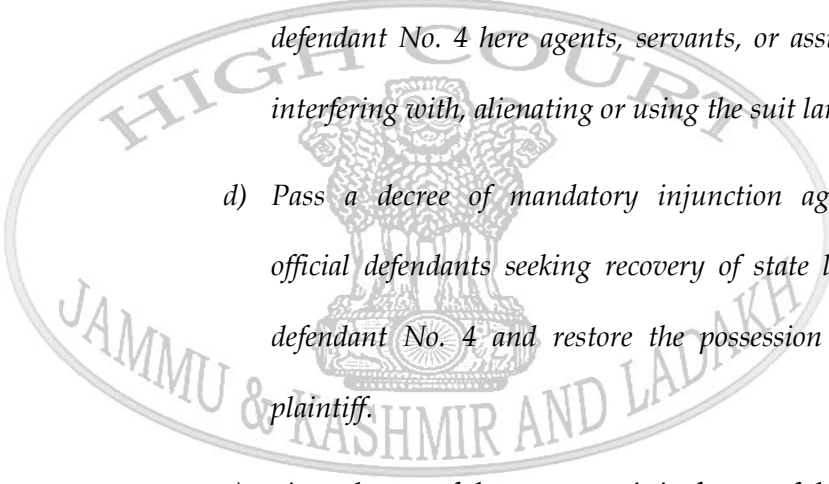
remained in actual, peaceful, settled and continuous possession of the subject land since the year 2007.

09. This order of the Executive Magistrate 1st Class, Harwan dated 10.08.2026 was called in question by the respondent No. 6 & 7 in WP(C) 2009/2026. The Writ Court having considered the rival contentions and the material on record, came to the conclusion that the proceedings initiated by the Executive Magistrate 1st Class, Harwan at the instance of SHO P/S Harwan were not in consonance with Section 164 of BNSS, and, therefore, deserved to be set aside. Consequently, the writ petition was allowed by the Writ Court and the entire proceedings culminating into final order dated 10.08.2026, were set aside. The Writ Court, however, directed the Civil Court to place the subject land in attachment with the Nazir of the Court of Principal District Judge, Srinagar.

10. It is this order of the learned Single Judge dated 21.08.2026 which is called in question before us in this appeal.

11. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order of the Writ Court in so far as it places the suit property in attachment with the Nazir of the court of Principal District Judge, Srinagar is flawed

and cannot be countenanced. Admittedly, when the suit was filed by the respondents 6 & 7 before the Civil Court, they were out of possession of the suit land. This is so evident from the pleadings in the plaint and the prayer made therein. For facility of reference, the prayer clause of the suit is set out below:-

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- a) *Declare that the plaintiff as the absolute possessor of the land measuring 16 marlas (Survey No. 126, Harwan, Srinagar), adjacent to 2 marla Milkiyat Land;*
 - b) *Declare the defendant No.4's possession null, void, and without/lawful basis and direct vacation thereof forthwith;*
 - c) *Grant a decree of permanent injunction restraining the defendant No. 4 here agents, servants, or assigns from interfering with, alienating or using the suit land;*
 - d) *Pass a decree of mandatory injunction against the official defendants seeking recovery of state land from defendant No. 4 and restore the possession with the plaintiff.*
 - e) *Award costs of the present suit in favour of the plaintiff and against the defendant No. 4; and*
 - f) *Grant any other or further order(s) as the Court may deem fit and proper in the facts and circumstances of the present case, in the interest of justice and equity.*

12. From the perusal of the prayer clause, it is beyond any shadow of doubt that the respondent Nos. 6 & 7

admitted the appellant No. 1 to be in possession of the suit property. It is because of this reason the suit was essentially for recovery of possession from the defendant No. 4/appellant No. 1 herein. There is no dispute with regard to the fact that in the plaint, the respondent Nos. 6 & 7 herein have claimed that out of suit property measuring 18 marlas, 2 marlas is the proprietary land of the respondent Nos. 6 & 7 and the rest is shamilat deh land, however, nowhere in the suit the respondent Nos. 6 & 7 have claimed that the appellant No. 2 is in possession of only 16 marlas whereas the two marlas milkiyati land is in their possession.

13. It is in the background of these pleadings of the respondent Nos. 6 & 7 the Civil Court passed the interim order dated 29.10.2025. The order does not provide for directing the parties to maintain the status quo in respect of suit property, rather it unequivocally directs the appellant No. 1 herein to maintain status quo in respect of the suit property. The Civil Court also clarifies as to what actually constitutes the suit property when it says that it is land measuring 18 marlas. The order of status quo dated 29.10.2025, thus protected the suit

property as well as the *lis* and, therefore, any attempt by any party to change that status quo is to be viewed as willful disobedience and violation of the interim order passed by the Civil Court attracting action under Order 39 Rule 2(A) CPC.

14. In these circumstances when there was no dispute with regard to the possession of the suit property and the Court had protected such possession by issuing order of status quo, there was no reason or occasion for invocation of Section 164 BNSS. The attempt by one of the parties to violate the order of status quo which is clear and unequivocal and has been passed after *prima facie* finding a particular party in possession, is nothing but disobedience and violation of the interim order, is to be dealt with under Order 39 Rule 2(A) CPC and not by having resort to provisions of Section 164 BNSS as has happened in the instant case. We reiterate that the possession of the defendant No. 4/appellant No. 1 herein over the suit property is not in dispute as it is the categoric and emphatic case of the respondent No. 6 & 7 { the plaintiffs} that they are out of possession of the suit property, and, therefore, pray for a decree of possession.

The respondent Nos. 6 & 7 have also claimed a decree of

mandatory injunction against the official respondents to evict the appellant No. 1 and put respondent No. 6 & 7. In view of clear and unequivocal pleadings and the case set up by the respondent Nos. 6 & 7, the Civil Court has very consciously passed the order dated 29.10.2025, protecting the *lis*.

15. The subsequent attempt, if any, made by the respondent Nos. 6 & 7 herein or the police, to violate that order of status quo was nothing short of disobedience of order passed by the Civil Court to be dealt with under Order 39 Rule 2(A) CPC and was not a case for initiating proceedings under Section 164 BNSS.
16. For the foregoing reasons we are in agreement with the writ court that the entire proceedings initiated by the Executive Magistrate 1st Class, Harwan at the instance of SHO P/S Harwan were illegal and uncalled for. We, however, are of the view that the possession of the suit property as it existed on 29.10.2025 was required to be maintained and there was no reason or occasion to put it under the attachments of the Nazir of the Court of Principal District Judge, Srinagar.

17. In view of the above, we allow this petition, quash and set aside the order of the writ court in so far as it directs the

attachment of the property with the Nazir of the court of Principal District Judge, Srinagar. The property deserves and should be restored to the appellants in terms of order dated 29.10.2025. The judgment of the writ Court is modified to the aforesaid extent.

18. Keeping in view the nature of controversy involved, the Trial Court shall expedite the consideration of the main as well as the application for interim relief. We make it clear that nothing said in this order shall not prejudice either of the parties before the Trial Court.

19. **Disposed of.**

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (A)

SRINAGAR:
02.09.2026
"S. NUZHAT"

i. Whether the Order is Reportable?

Yes/No